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10/698,196	10/30/2003	Michael Harville	200313240-1	3553
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HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			EXAMINER BURGESS, BARBARA N	
			ART UNIT 2457	PAPER NUMBER
			NOTIFICATION DATE 03/02/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/698,196	Applicant(s) HARVILLE ET AL.	
	Examiner BARBARA N. BURGESS	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 38-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 38-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to Appeal Brief filed December 2, 2009. The finality of claims 1, 38-76 based on Lumelsky alone has been withdrawn. Claims 1, 38-76 are presented for further examination.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1, 38-76 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. As per claims 56-76, Applicant's specification teaches a system including a plurality of service location managers, service portals, and service providers as logical entities that can be implemented on a single device. The system can be representative of a single computer system that implements the functionality of service location Managers, portals, and service providers (page 11, lines 1-10). These functionalities may be implemented by software applications on the single computer. Based on the passage recited above from the specification, such terms can be interpreted as hardware, software or a combination thereof. The claim is software per se based on the disclosure since such claims lacking "hardware ". Therefore, claim 56-76 are non-statutory.

4. Claims 1, 38-55 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385.

5. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method including steps of receiving a request, selecting a service location manager, selecting a service provider, informing a service provider, and providing client information is broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent. Therefore, claim 1, 38-55 are non-statutory.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 38-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky et al. (hereinafter "Lume", US Patent 6,529,950) in view of Pitkin et al. (hereinafter "Pitkin", US Patent 5,341,477).

As per claim **1**, Lume discloses a method for managing a streaming media service, said method comprising:

- receiving a request for a service from a client, said service comprising a service component (col. 5, lines 61-67);
- selecting a service location manager (negotiator) to which to provide said request from a plurality of service location managers (col. 6, lines 3-18); and
- selecting a service provider to which to assign said service component from a plurality of service providers of a network, wherein said selecting said service provider is performed by said service location manager (col. 6, lines 25-33, 50-59);
- informing said service provider of said assignment to perform said media service component, causing said service provider to prepare to perform said streaming media service on streaming media (col. 3, lines 60-67, col. 8, lines 26-30).

Lume does not explicitly disclose:

- providing said client information for locating and contacting said service provider to receive said streaming media from said service provider without utilizing said service location manager.

As per claim **38**, Lume discloses wherein said selecting said service location manager comprises:

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- maintaining a record comprising identifying information of a service location manager among said plurality of service location managers (col. 8, lines 22-30); and
- selecting said service location manager according to said record (col. 6, lines 60-66).

As per claim **39**, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising a prioritized list of at least one service location manager among said plurality of service location managers (col. 8, lines 20-30); and
- selecting said service location manager according to the order of priority of said list of said record (col. 8, lines 57-67).

As per claim **40**, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising identifying information for a set of service location managers among said plurality of service location managers (col. 8, lines 22-33) and
- selecting said service location manager randomly from said record (col. 8, lines 57-67).

As per claim **41**, Lume discloses wherein said selecting said service location manager comprises:

- maintaining a record comprising identifying information for a set of service location managers among said plurality of service location managers (col. 9, lines 57-67); and
- selecting said service location manager in a round robin manner from said record (col. 8, lines 57-67).

As per claim **42**, Lume discloses:

- wherein said selecting said service location manager comprises a comparison of processing loads of at least two service location managers among said plurality of service location managers (col. 3, lines 51-61).

As per claim **43**, Lume discloses:

- wherein said selecting said service location manager comprises a comparison of available resources of a first set of service providers supervised by said service location manager and available resources of a second set of service providers supervised by a second service location manager (col. 4, lines 61-67, col. 4, lines 1-8).

As per claim **44**, Lume discloses:

- wherein said selecting said service location manager is based on an estimate of a network communication condition between two entities connected by the network (col. 6, lines 62-67 and col. 4, lines 1-17).

As per claim **45**, Lume discloses:

- wherein said estimate of said network communication condition is associated with said client (col. 6, lines 1-10 and col. 4, lines 50-67).

As per claim **46**, Lume discloses:

- wherein said estimate of said network communication condition is associated with a content source of said streaming media (column 6, lines 25-34).

As per claim **47**, Lume discloses wherein said selecting said service location manager is based on one of the group consisting of:

- pending service application request queue length of a service location manager, expected latency of a service location manager for assigning said service request, and available network communication bandwidth of a service location manager (col. 8, lines 25-34).

As per claim **48**, Lume discloses:

- notifying a second service location manager among said plurality of service location managers of the assignment of said service provider to perform said media service component (col. 5, lines 35-60).

As per claim **49**, Lume discloses:

- notifying a second service location manager among said plurality of service location managers of the completion of performance of said media service component (col. 6, lines 45-60).

As per claim **50**, Lume discloses:

- a second service location manager assuming the role of said service location manager if said service location manager is determined to be non-responsive (col. 6 , lines 53-67).

As per claim **51**, Lume further discloses:

- maintaining a record comprising identifying information of a set of service location managers among said plurality of service location managers, each service location manager of said set of service location managers supervising said service provider (col. 6, lines 50-67 and col. 8, lines 3-17).
- notifying said set of service location managers according to said record of said assignment of said service provider to perform said media service component (col. 8, lines 33-40).

As per claim **52**, Lume discloses:

- wherein said maintaining and said notifying is performed by said service provider or said service location manager (col. 6, lines 50-67).

As per claim **53**, Lume further discloses:

- maintaining a record comprising identifying information of a set of service location managers among said plurality of service location managers, each service location manager of said set of service location managers supervising said service provider (col. 8, lines 44-57).
- notifying said set of service location managers according to said record of the completion of performance of said media service component by said service provider (col. 8, lines 55-67).

As per claim **54**, Lume discloses:

- wherein said maintaining and said notifying is performed by said service provider or said service location manager (col. 3, lines 11-17).

As per claim **55**, Lume discloses:

- wherein said service provider is supervised by more than one service location manager among said plurality of service location managers (col. 6, lines 57-67).

As per claim **56**, Lume discloses a system for providing streaming content to a client device, said system comprising:

- a plurality of service location managers (col. 6, lines 3-18);
- a plurality of service providers (col. 6, lines 25-35),
- each service provider capable of performing a service on an item of streaming input content to produce said streaming content (col. 6, lines 50-59); and
- a portal providing a first point of contact for said client device, said portal for receiving from said client device a request for performance of said service on an item of streaming input content, said portal for selecting a service location manager to which to provide said request from said plurality of service location managers, said service location manager for receiving said request from said portal and for selecting a service provider from said plurality of service providers and informing said service provider of said assignment to perform said service on said streaming input content to produce said streaming content ((col. 4, lines 65-67, col. 5, lines 15-27, 58-67, col. 6, lines 1-2, 25-59, col. 8, lines 25-35, col. 10, lines 45-50).

Lume does not explicitly disclose:

- for providing said service provider with information to transfer communication from said portal to said service provider for providing said streaming content to said client from said service provider

However, in an analogous art, Pitkin teaches a broker (service location manager) receiving client requests for services and suggesting/selecting servers to implement the

requested service. Servers are stored and shown to the user as entries in a preview window. The client accesses the service through the entries presented. If the first server entry fails, the client attempts to use the second server entry without having to reconnect to the broker (column 10, lines 53-67).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Pitkin's providing client information for locating and contacting a service provider without utilizing a service location manager in Lume's method decreasing client connection time.

As per claim **57**, Lume discloses:

- wherein said portal maintains a record comprising a prioritized listing of at least one service location manager among said plurality of service location managers and selects said service location manager in order of priority according to said prioritized listing (col. 6, lines 25-40).

As per claim **58**, Lume discloses:

- wherein said portal maintains a record comprising identifying information of a set of service location managers among said plurality of service location managers and selects said service location manager in a round robin manner from said record (col. 6, lines 20-35).

As per claim **59**, Lume discloses:

- wherein said portal selects said service location manager by comparing processing loads of at least two service location managers among said plurality of service location managers (col. 3, lines 51-67).

As per claim **60**, Lume discloses:

- wherein said portal selects said service location manager by comparing available resources of a first set of service providers supervised by said service location manager and available resources of a second set of service providers supervised by a second service location manager (col. 4, lines 61-67 and col. 5, lines 1-8).

As per claim **61**, Lume discloses:

- wherein said portal selects said service location manager based on an estimate of a network communication condition between two entities connected by the network (col. 8, lines 50-67).

As per claim **62**, Lume discloses:

- wherein said service location manager notifies a second service location manager among said plurality of service location managers of said assignment of said service provider to perform said service (col. 9, lines 22-40).

As per claim **63**, Lume discloses:

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- wherein said portal determines if said service location manager of said plurality of service location managers is non-responsive (col. 9 , lines 53-67).

As per claim **64**, Lume discloses:

- wherein said portal activates a second service location manager of said plurality of service location managers to assume the role of said service location manager, provided said portal determines said service location manager to be non-responsive (col. 6 , lines 53-67).

As per claim **65**, Lume discloses:

- wherein said service provider is supervised by more than one service location manager of said plurality of service location managers (col. 5, lines 65-67 and col. 6, lines 1-8).

As per claim **66**, Lume discloses:

- wherein said service provider maintains a record comprising identifying information of service location managers that supervise it (col. 6, lines 50-67).

As per claim **67**, Lume discloses:

- wherein said service provider notifies said service location managers that supervise it of said assignment to perform said service (col. 8, lines 1-20).

As per claim **68**, Lume discloses:

- wherein said service provider notifies said service location managers that supervise it of completion of performance of said service by said service provider (col. 6, lines 22-35).

As per claim **69**, Lume discloses:

- wherein said service location manager maintains a record comprising identifying information of a second service location manager that also supervises said service provider (col. 5, lines 47-58 and col. 6, lines 3-17).

As per claim **70**, Lume discloses:

- wherein said service location manager notifies said second service location manager of said assignment of said service provider to perform said service (col. 8, lines 45-57).

As per claim **71**, Lume discloses:

- wherein said service location manager notifies said second service location manager of completion of performance of said service by said service provider (col. 8, lines 50-67).

As per claim **72**, Lume discloses:

- wherein said service provider is supervised by a first service location manager, and said first service location manager transfers supervision of said service provider to a second service location manager (col. 6, lines 40-58).

As per claim **73**, Lume discloses:

- wherein said transfer is based on a computational load of said first service location manager (col. 3, lines 51-61).

As per claim **74**, Lume discloses:

- wherein said transfer is based on availability of resources of a service provider supervised by said second service location manager (col. 5, lines 40-58 and col. 6, lines 3-17).

As per claim **75**, Lume discloses:

- wherein said service provider is selected to be supervised by said service location manager based on a network communication condition between said service location manager and said service provider (col. 3, lines 62-67 and col. 4, lines 1-17).

As per claim **76**, Lume discloses:

- wherein said plurality of service location managers comprises a master service location manager that monitors the status of other service location managers of

said plurality of service location managers (col. 3, lines 62-67 and col. 5, lines 1-17.

Response to Arguments

8. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA N. BURGESS whose telephone number is (571)272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Barbara N Burgess/
Examiner, Art Unit 2457

Barbara N Burgess
Examiner
Art Unit 2457

February 25, 2010

/Barbara N Burgess/
Examiner, Art Unit 2457